IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3932 of 2002
With
CIVIL APPLICATION No. 12586 of 2005
In SPECIAL CIVIL APPLICATION No. 3932 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT HIGH COURT NON GAZETTED MINISTERIAL STAFF ASSO. & 1 - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :

MR SHALIN N MEHTA for Petitioner(s) : 1 - 2.
MR MIHIR JOSHI, Ld Addl. Advocate General with Mr.Satyam Chhaya, AGP for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2 - 3.
LAW OFFICER BRANCH for Respondent(s) : 4,
MR JB PARDIWALA for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 15/03/2007

ORAL JUDGMENT

1. The main Special Civil Application is preferred by the petitioner Association for challenging the legality and validity of the Government Resolution dated March 20, 2001, more particularly in light of the contentions raised at ground “B” in the memo of the petition. The petitioners have also prayed to restrain the respondents from insisting upon the conditions of the Government Resolution dated 20th March, 2001 and have prayed to direct respondents to allot the plots of lands at Vasantnagar Township without insisting upon those conditions. The petitioners have also prayed to direct the respondent Government to allot plots of lands in Gandhinagar to the members of the petitioner Association on the same basis and conditions on which the plots of lands have been allotted to the employees of the Gujarat Government and Gujarat Cadre of IAS services. The petitioners have also prayed for appropriate writ to quash and set aside the Government Resolutions dated 29.3.2001 and 27.12.2001 to the extent that the resolutions seek to exclude the members of the

petitioner Association from allotment of lands/plots in Gandhinagar City at concessional rate.

2. It appears that pending the Special Civil Application, there were interim applications being Civil Application No.8876 of 2004 and No.11075 of 2005. It appears that on 15.3.2005, this Court (Coram: J.N.Bhatt, J.) had passed the order in Civil Application No.8876 of 2004 in Special Civil Application No.3932 of 2002, whereby the directions were given for issuance of individual notices to the members of the petitioner Association for the purpose of payment of the price fixed at 50% of Rs.1,535/- per sq. mtr., for the allotment of the plots in categories of 90, 135, 200 and 250 sq. mtrs. size plots. The other directions were also issued by this Court, which, as such, is complied with, pending the main Special Civil Application and it has been submitted by Mr.Mehta, learned Counsel for the petitioners, that all the members of the petitioner Association, who were issued notices by

Collector for calling up them to make the payment pursuant to the directions issued by the Court vide order dated 15.3.2005 in the said Civil Application.

3. However, it appears that thereafter, the District Collector issued another notice dated 5.12.2005 calling up the members of the petitioner Association to pay the additional amount at the rate of Rs.764/- per sq. mtr., in proportion to the area allotted, towards the land for internal road, common plot, etc., and being aggrieved by the said notice, the petitioners preferred Civil Application No.12586 of 2005 in SCA No.3932 of 2002. In the said Civil Application also, various interim directions were given. Ultimately, this Court on 26.12.2006 had passed the following order:

> 1.Upon hearing Mr.Mehta, learned Counsel for the applicants, Mr.Mihir Joshi, learned Additional Advocate General with Mr.Dipen Desai, learned AGP for the State, Mr.Ravani, learned Counsel for the Housing Board, Mr.Marshall, learned Counsel for AUDA and

Mr.Pandya for Mr.Desai, learned Counsel for the Corporation, it prima facie appears from the affidavit filed by the Gujarat Housing Board that for the whole locality of Vasantnagar Township, the Gujarat Housing Board has sold the area to the general public at the cost of Rs.2087/- (wrongly typed as Rs.2078) and it appears that the said cost includes the cost of common plot, internal roads and other common facilities to be enjoyed by all the allottees of the scheme of the Housing Board known as 'Vasantnagar Township'. Therefore, if the cost of Rs.2087/- is made as the basis by the Housing Board for allotment to the general public qua the net area to be occupied by the allottee, the cost of Rs.1,535/- per sq. mtr., qua the actual area to be occupied by the employees concerned and the additional cost at the rate of Rs.764/- per sq. mtr. (in addition to Rs.1,535/-) would come to Rs.2,299/-, which, in any case, exceeds Rs.2087/-.

2.It prima facie appears that there is no valid justification for passing over the cost of common plots, internal roads, etc., which are to be enjoyed by all the residents of Vasantnagar Township, exceeding the cost, which is generally to be borne by all the allottees of the Township. If such a cost of Rs.1,535/- plus Rs.764/- is permitted to be maintained, the consequence would be that the members of the applicant Association will be required to bear the cost of common plots, internal roads, etc., which are also to be used by the other residents of Vasantnagar Township. Therefore, it prima facie appears that if, even for the allotment of the land to the members of the applicant Association, the basis of the cost of Rs.2,087/., as adopted by the Housing Board, is considered by the State Government for allotment to the members of the applicant Association in place of Rs.1,535/-, no additional burden qua the

common plot, internal roads, etc., may be required to be borne and such common plot, internal roads, etc., would continue to be common for all the residents of Vasantnagar Township, including the members of the applicant Association, who may be allotted plots.

4. At this stage, Mr.Joshi, learned Additional Advocate General, states that before this Court passes further order, the Government would like to consider the matter, since the issue may be put to an end. Mr.Shalin Mehta, learned Counsel for the applicants, has no objection if the Government is inclined to consider the basis of Rs.2,087/-, keeping the other conditions unaltered and no additional cost to be borne by the allottees, who are members of the applicant Association.

5. Hence, **S O to 01.02.2007.** The State Government shall consider the matter in

light of the prima facie observations of this Court and the decision of the State Government in this regard shall be placed before this Court before the returnable date.

6. Mr.Mehta, learned Counsel appearing for the applicants prayed to treat the matter as part-heard. However, in absence of any order of the Hon'ble the Acting Chief Justice on administrative side, it is not possible for this Court to accept the said request. Hence, office to place the matter as may be ordered by the Hon'ble the Acting Chief Justice on administrative side."

3. It appears that thereafter the matter was considered by the State Government in light of the order passed by this Court read with the earlier order and today Mr.Joshi, learned Additional Advocate General appearing with Mr.Chhaya, learned AGP places on record the decision of the State Government dated 12.3.2007 for calculating the amount on the basis of the

price at Rs.2,078/- per sq. mtr., with the express provision that for the area of common plot and road, the allottees of the plots concerned will be entitled to make use together with the other residents of the Housing Board Colony.

4. Mr.Mehta, learned Counsel appearing for the petitioner, under the instructions of his client declared before the Court that the members of the petitioner Association have no objection, if the order passed by the State Government dated 12.3.2007 pursuant to the order passed by this Court dated 26.12.2006 is to be implemented and he further declared before the Court that the members of the petitioner Association are agreeable to pay the difference of the amount, if any, at the rate of Rs.2078/- per sq. mtrs. However, he submitted that as the matter is pending for a long time, appropriate directions may be given to the Collector concerned to issue individual notice to the allottees concerned and for issuance of the *Sanad* within a reasonable time, so that the members of the petitioner Association, after issuance of *Sanad* and after obtaining permission for construction of the

local authority can start construction.

5. Mr.Joshi, learned Addl. Advocate General appearing with Mr.Chhaya, learned AGP, submitted that if time is given of about 15 days, the Collector shall issue individual notices to the persons concerned for payment of the difference of the amount. However, he submitted that as per his instruction, certain allottees are to receive area exceeding prescribed proportionate limit of 90 sq. mtr., etc. Therefore, he submitted that if the area is exceeding the prescribed limit, for the additional area, the persons concerned will be required to pay full amount, calculating at Rs.2,078/- per sq. mtr. However, he confirmed the position that so far as the prescribed area of 90 sq. mtr., etc., are concerned, 50% of Rs.2,078/- per sq. mtr., in place of 50% of Rs.1,535/- per sq. mtr., are to be paid. He also submitted that about three months' time may be given for issuance of the *Sanad* to the concerned members of the Association after the payment, so that the marking of the boundaries and other works, which are incidental to the preparation of the *Sanad* can be completed.

7. Mr.Chhaya, learned AGP appearing for the Government Authorities, submits that in the aforesaid Government Resolution dated 12.3.2007 it has been mentioned that the same will not be cited as a precedent and, therefore, no further clarification is required.

8. Considering the facts and circumstances and from the Government Resolution dated 12.3.2007, it appears that the basis of the price fixed in the earlier Government Resolution dated 20.3.2001 at the rate of Rs.1,535/- per sq. mtr., is substituted by Rs.2,078/- and, therefore, other conditions of the said Government Resolution as per Condition No.6 of the present Government Resolution dated 12.3.2007, are to remain same. However, such would apply so far as the prescribed limit of 90 sq. mtr., 135 sq. mtr., 200 sq. mtr., 250 sq. mtr., 330 sq. mtr., are concerned. However, as per the earlier Government Resolution, if the area is exceeding the prescribed limit of 90 sq. mtr., 135 sq. mtr., then in that case, as per the earlier Government Resolution read with the present resolution for the additional area in case of allotment of 90 sq. mtr., and 135 sq. mtr., full

amount at the rate of 2,078/- will have to be paid and so far as the other plots exceeding 200 sq. mtr., are concerned, the payment of the price shall be at 1.5 times and the only change will be in place of Rs.1,535/-, it will be substituted by Rs.2,078/-.

9. Considering the facts and circumstances, I find that the following directions shall meet with the ends of justice:-

(i) The District Collector, Ahmedabad shall issue necessary individual notices to the members of the petitioner Association based on the Government Resolution dated 12.3.2007 read with earlier resolution within a period of 15 days from the date of receipt of the order of this Court.

(ii) The necessary *Sanad* will be issued to the individual members concerned, who have paid up the amount as required, and the necessary boundaries of the plots concerned shall also be marked by the concerned officer, who may be deputed by the District Collector for such purpose, both within a period of two months from the date of

payment of the amount pursuant to the aforesaid notice.

(iii) It is needless to clarify that after the *Sanads* are issued, the concerned allottees would be entitled to develop the land by making construction after obtaining the necessary permission of the concerned authority, including the local authority.

10. The petition is disposed of in terms of the aforesaid directions. Rule made absolute accordingly.

11. In view of the aforesaid order in the main petition, Civil Application shall also stand disposed of accordingly.

15.3.2007 **(Jayant Patel, J.)**

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